IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO (MVA) No.403 of 2003.

Reserved on:04.05.2007.

Decided on: June 11, 2007

Smt.Ishwari Devi & Anr. **…..Appellants.**

VERSUS

Sh.Vinay Kumar & Ors. **…..Respondents.**

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the Appellants:	**Mr.Dibender Ghosh, Advocate.**
For the respondents:	**Mr.T.S.Chauhan, Advocate for respondents No.1 and 2.**
	Mr.B.M.Chauhan, Advocate for respondent No.3.

Kuldip Singh, Judge

The claimants / petitioners are in appeal against the award dated 2.12.2002 passed by Motor Accident Claims Tribunal (II), Shimla in MAC No.49-S/2 of 1996 awarding Rs.1,50,000/- compensation to be paid by insurer respondent No.3 with 9% interest on the date of filing of the petition. The amount awarded is inclusive of compensation under Section 140 of the Motor Vehicles Act, 1988. The parties, for convenience, are referred herein in the same manner as in the impugned award.

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment ?*** **Yes**

2. The brief facts are that the claimants filed petition under Section 166 of the Motor Vehicles Act, 1988 claiming Rs.6 lacs compensation on account of death of Roshan Lal deceased and Rs.22,000/- on account of loss suffered to apple boxes in the accident. The further facts are that Roshan Lal deceased was travelling along with apple boxes in truck No.DL-1-GA-1289 and the said truck was hit by tanker No.HP-24-3135 on 11.09.1995 at Lalru (Punjab) owned by respondent No.1 and was being driven by respondent No.2. In the accident, Roshan Lal suffered injuries, who was hospitalized for two days and thereafter he died on account of multiple injuries sustained by him in the accident. In the accident, 219 apple boxes were damaged. The accident had taken place due to rash and negligent driving of respondent No.2. The deceased was 47 years of age at the time of accident. The petitioners are widow and son of the deceased.

3. The petition has been contested by respondents No.1 and 2 by filing joint reply. It has been pleaded by them that accident has taken place due to the rash and negligent driving of the driver of truck No.DL-1-GA-1289 and not on account of rash and negligent driving of respondent No.2. They have denied the claim of the petitioners. In any case the claim is excessive. They have pleaded that Roshan Lal was driving the truck and he lost control over the vehicle as a result of which the vehicle turned turtle.

4. The respondent No.3 insurer filed the reply and has submitted that vehicle was being driven without valid permit, the driver was not having valid and effective licence at the time of accident. There is breach of terms and conditions of insurance policy, if any. In any case, the liability of the insurer is limited. The accident has taken place due to the rash and negligent driving of truck No.DL-1-GA-1289. The insurance of the truck No.HP-24-3135 has been denied.

5. The tribunal framed the following issues:-

(i) *Whether the accident leading to the death of Shri Roshan Lal was due to rash and negligent driving attributed to the driver, respondent No.2, as alleged? OPP*

(ii) *If issue No.1 is held affirmative, whether the petitioners are entitled to any amount of compensation, if so, to what extent and from whom? OPP*

(iii) *Whether the accident in question had taken place due to the rash and negligent driving attributed to the driver of truck No.DL-1-GA-1289, as alleged? OPR*

(iv) *Whether the petition is bad for non-joinder and mis-joinder of necessary parties?*

(v) *Relief.*

The Issues No.1 to 4 were decided in favour of the petitioners and against the respondents. The tribunal ultimately passed the impugned award. The petitioners are in appeal against the impugned award and are claiming enhancement of the compensation.

6. I have heard the learned counsel for the parties and have also gone through the record.

7. It has been submitted by the learned counsel for the petitioners that the tribunal has assessed the income of the deceased on the lower side and has consequently awarded less compensation to the petitioners. The agricultural and horticultural income of the deceased has not been taken into consideration while assessing the compensation. He has urged that petitioners are entitled to enhancement of compensation. The learned counsel for the respondents has submitted that the petitioners have failed to prove income of the deceased. The tribunal has awarded excess compensation. Hence, the petitioners are not entitled to enhancement of compensation.

8. PW-1 Ishwari Devi has deposed that her son was minor at the time of filing the petition, her husband was agriculturist and apple contractor. He was earning Rs.5000/- per month. He used to contribute Rs.4000/- for running the expenses of the house. On account of her illness, she is unable to perform agricultural work which

is now done through labourers. She has suffered huge loss of income from the orchard after the death of her husband. An amount of Rs.7000/- was spent on the treatment of her husband and for transporting the dead body. In cross examination, she has stated that she has no proof of the fact that her husband was earning Rs.5000/- per month.

9. PW-2 Beli Ram is the brother of the deceased Roshan Lal. He has stated that Roshan Lal was an agriculturist and orchardist. Now, orchard is managed through contractor as a result of which income has been reduced. F.I.R. Ext.PB and postmortem report Ext.PA were tendered in evidence. RW-1 Ranvir Singh Thakur has proved Ext.RW-1/A copy of insurance policy of vehicle No.HP-24-3135. RW-2 Satya Dev, licence Clerk, has proved entry of licence Ext.RW-2/A which was renewed vide entry Ext.RW-2/B. Driving licence Ext.RW-2/C has been issued as per record in favour of Jagat Pal. In cross examination, he has admitted that on Ext.RW-2/C there is endorsement of HGV. RW-3 Vijay Kumar is the owner of tanker No.HP-24-3135 and has stated that Jagat Pal was driver on his tanker. At the time of employment of Jagat Pal he was having valid driving licence.

10. The learned counsel for the petitioners has submitted that the deceased was earning Rs.5000/- per month. The evidence led by the petitioners regarding the income of the deceased has not been

rebutted. The tribunal has erred in taking income of the deceased at Rs.15,000/- per annum. The petitioners except for bald statement of petitioner No.1 have placed nothing on record to prove the income of the deceased. In the absence of specific evidence, the tribunal has committed no error in assessing the annual income of the deceased at Rs.15,000/- per annum and thereafter contribution by him towards his family Rs.10,000/- per annum. In the grounds of appeal, it has been urged that income of the deceased should have been taken at least Rs.1800/- per month. The family of deceased consisted of petitioners and deceased. On applying the unit system, even if income of the deceased is taken Rs.1800/-, his contribution to the family would come slightly more than Rs.10,000/- per annum but the fact cannot be ignored that the tribunal has applied the multiplier of 14 for assessing the compensation which is on the higher side keeping in view 47 years of age of the deceased at the time of accident. Therefore, even if income of the deceased is assumed Rs.1800/- per month in that case also the petitioners would not be entitled to enhancement of compensation what has already been awarded to them by the tribunal. The tribunal has awarded Rs.10,000/- as conventional and funeral expenses over and above the compensation of Rs.1,40,000/-. The petitioners have placed no documentary proof of the income of the deceased from agriculture and as orchardist. The bald statement of petitioner No.1 is not enough to prove the income of the deceased.

Therefore, in the facts and circumstances of the case, the compensation awarded by the tribunal along with interest on account of death of Roshan Lal is just and reasonable. The learned counsel for the petitioners has failed to make out any case for interference. The compensation awarded shall be payable to the petitioners in the ratio of 70:30 as held by the tribunal.

11. No other point was urged.

12. In view of the above discussion, the appeal is dismissed with no order as to costs.

(Kuldip Singh)
Judge.

June 11, 2007
(soni)